

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of persons who are elderly or disabled or who are children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 532.001(b), Health and Safety Code, is amended to read as follows:

(b) The Department of Aging and Disability Services and the Department of State Health Services also include community services operated by those departments and the following facilities, as appropriate:

- (1) the central office of each department;
- (2) the Austin State Hospital;
- (3) the Big Spring State Hospital;
- (4) the Kerrville State Hospital;
- (5) the Rusk State Hospital;
- (6) the San Antonio State Hospital;
- (7) the Terrell State Hospital;
- (8) the North Texas State Hospital;
- (9) the Abilene State Supported Living Center;
- (10) the Austin State Supported Living Center;
- (11) the Brenham State Supported Living Center;
- (12) the Corpus Christi State Supported Living Center;
- (13) the Denton State Supported Living Center;
- (14) the Lubbock State Supported Living Center;

- 1 (15) the Lufkin State Supported Living Center;
- 2 (16) the Mexia State Supported Living Center;
- 3 (17) the Richmond State Supported Living Center;
- 4 (18) the San Angelo State Supported Living Center;
- 5 (19) the San Antonio State Supported Living Center;
- 6 (20) the El Paso State Supported Living Center;
- 7 (21) the Rio Grande State Center; ~~and~~
- 8 (22) the Waco Center for Youth; and
- 9 (23) the El Paso Psychiatric Center.

10 SECTION 2. Subchapter A, Chapter 552, Health and Safety
11 Code, is amended by adding Section 552.0011 to read as follows:

12 Sec. 552.0011. DEFINITIONS. In this chapter:

13 (1) "Commission" means the Health and Human Services
14 Commission.

15 (2) "Department" means the Department of State Health
16 Services.

17 (3) "Direct care employee" means a state hospital
18 employee who provides direct delivery of services to a patient.

19 (4) "Executive commissioner" means the executive
20 commissioner of the Health and Human Services Commission.

21 (5) "Inspector general" means the Health and Human
22 Services Commission's office of inspector general.

23 (6) "Patient" means an individual who is receiving
24 voluntary or involuntary mental health services at a state
25 hospital.

26 (7) "State hospital" means a hospital operated by the
27 department primarily to provide inpatient care and treatment for

1 persons with mental illness.

2 SECTION 3. Chapter 552, Health and Safety Code, is amended by
3 adding Subchapters C and D to read as follows:

4 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE
5 HOSPITALS

6 Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The
7 executive commissioner shall adopt a policy requiring a state
8 hospital employee who knows or reasonably suspects that another
9 state hospital employee is illegally using or under the influence
10 of a controlled substance, as defined by Section 481.002, to report
11 that knowledge or reasonable suspicion to the superintendent of the
12 state hospital.

13 Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING. (a) Before
14 a state hospital employee begins to perform the employee's duties
15 without direct supervision, the department shall provide the
16 employee with competency training and a course of instruction about
17 the general duties of a state hospital employee. The department
18 shall ensure the basic state hospital employee competency course
19 focuses on:

20 (1) the uniqueness of the individuals the state
21 hospital employee serves;

22 (2) techniques for improving quality of life for and
23 promoting the health and safety of individuals with mental illness;
24 and

25 (3) the conduct expected of state hospital employees.

26 (b) The department shall ensure the training required by
27 Subsection (a) provides instruction and information regarding

1 topics relevant to providing care for individuals with mental
2 illness, including:

3 (1) the general operation and layout of the state
4 hospital at which the person is employed, including armed intruder
5 lockdown procedures;

6 (2) an introduction to mental illness;

7 (3) an introduction to substance abuse;

8 (4) an introduction to dual diagnosis;

9 (5) the rights of individuals with mental illness who
10 receive services from the department;

11 (6) respecting personal choices made by patients;

12 (7) the safe and proper use of restraints;

13 (8) recognizing and reporting:

14 (A) evidence of abuse, neglect, and exploitation
15 of individuals with mental illness;

16 (B) unusual incidents;

17 (C) reasonable suspicion of illegal drug use in
18 the workplace;

19 (D) workplace violence; or

20 (E) sexual harassment in the workplace;

21 (9) preventing and treating infection;

22 (10) first aid;

23 (11) cardiopulmonary resuscitation;

24 (12) the Health Insurance Portability and
25 Accountability Act of 1996 (Pub. L. No. 104-191); and

26 (13) the rights of state hospital employees.

27 (c) In addition to the training required by Subsection (a)

1 and before a direct care employee begins to perform the direct care
2 employee's duties without direct supervision, the department shall
3 provide the direct care employee with training and instructional
4 information regarding implementation of the interdisciplinary
5 treatment program for each patient for whom the direct care
6 employee will provide direct care, including the following topics:

7 (1) prevention and management of aggressive or violent
8 behavior;

9 (2) observing and reporting changes in behavior,
10 appearance, or health of patients;

11 (3) positive behavior support;

12 (4) emergency response;

13 (5) person-directed plans; and

14 (6) self-determination.

15 (d) In addition to the training required by Subsection (c),
16 the department may provide a direct care employee with training and
17 instructional information as necessary regarding:

18 (1) seizure safety;

19 (2) techniques for:

20 (A) lifting;

21 (B) positioning; and

22 (C) movement and mobility;

23 (3) working with aging patients;

24 (4) assisting patients:

25 (A) who have a visual impairment;

26 (B) who have a hearing deficit; or

27 (C) who require the use of adaptive devices and

1 specialized equipment;

2 (5) communicating with patients who use augmentative
3 and alternative devices for communication;

4 (6) assisting patients with personal hygiene;

5 (7) recognizing appropriate food textures;

6 (8) using proper feeding techniques to assist patients
7 with meals; and

8 (9) physical and nutritional management plans.

9 (e) The executive commissioner shall adopt rules that
10 require a state hospital to provide refresher training courses to
11 employees on a regular basis.

12 Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND
13 TRACKING SYSTEM. The department shall develop an information
14 management, reporting, and tracking system for each state hospital
15 to provide the department with information necessary to monitor
16 serious allegations of abuse, neglect, or exploitation.

17 Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department
18 shall develop risk assessment protocols for state hospital
19 employees for use in identifying and assessing possible instances
20 of abuse or neglect.

21 SUBCHAPTER D. INSPECTOR GENERAL DUTIES

22 Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH
23 CERTAIN INVESTIGATIONS. The inspector general shall employ and
24 commission peace officers for the purpose of assisting a state or
25 local law enforcement agency in the investigation of an alleged
26 criminal offense involving a patient of a state hospital. A peace
27 officer employed and commissioned by the inspector general is a

1 peace officer for purposes of Article 2.12, Code of Criminal
2 Procedure.

3 Sec. 552.102. SUMMARY REPORT. (a) The inspector general
4 shall prepare a summary report for each investigation conducted
5 with the assistance of the inspector general under this subchapter.
6 The inspector general shall ensure that the report does not contain
7 personally identifiable information of an individual mentioned in
8 the report.

9 (b) The summary report must include:

10 (1) a summary of the activities performed during an
11 investigation for which the inspector general provided assistance;

12 (2) a statement regarding whether the investigation
13 resulted in a finding that an alleged criminal offense was
14 committed; and

15 (3) a description of the alleged criminal offense that
16 was committed.

17 (c) The inspector general shall deliver the summary report
18 to the:

19 (1) executive commissioner;

20 (2) commissioner of state health services;

21 (3) commissioner of the Department of Family and
22 Protective Services;

23 (4) State Health Services Council;

24 (5) governor;

25 (6) lieutenant governor;

26 (7) speaker of the house of representatives;

27 (8) standing committees of the senate and house of

1 representatives with primary jurisdiction over state hospitals;

2 (9) state auditor; and

3 (10) alleged victim or the alleged victim's legally
4 authorized representative.

5 (d) A summary report regarding an investigation is subject
6 to required disclosure under Chapter 552, Government Code. All
7 information and materials compiled by the inspector general in
8 connection with an investigation are confidential, not subject to
9 disclosure under Chapter 552, Government Code, and not subject to
10 disclosure, discovery, subpoena, or other means of legal compulsion
11 for their release to anyone other than the inspector general or the
12 inspector general's employees or agents involved in the
13 investigation, except that this information may be disclosed to the
14 Department of Family and Protective Services, the office of the
15 attorney general, the state auditor's office, and law enforcement
16 agencies.

17 Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector
18 general shall prepare an annual status report of the inspector
19 general's activities under this subchapter. The annual report may
20 not contain personally identifiable information of an individual
21 mentioned in the report.

22 (b) The annual status report must include information that
23 is aggregated and disaggregated by individual state hospital
24 regarding:

25 (1) the number and type of investigations conducted
26 with the assistance of the inspector general;

27 (2) the number and type of investigations involving a

1 state hospital employee;

2 (3) the relationship of an alleged victim to an alleged
3 perpetrator, if any;

4 (4) the number of investigations conducted that
5 involve the suicide, death, or hospitalization of an alleged
6 victim; and

7 (5) the number of completed investigations in which
8 commission of an alleged offense was confirmed or unsubstantiated
9 or in which the investigation was inconclusive, and a description
10 of the reason that allegations were unsubstantiated or the
11 investigation was inconclusive.

12 (c) The inspector general shall submit the annual status
13 report to the:

14 (1) executive commissioner;

15 (2) commissioner of state health services;

16 (3) commissioner of the Department of Family and
17 Protective Services;

18 (4) State Health Services Council;

19 (5) Family and Protective Services Council;

20 (6) governor;

21 (7) lieutenant governor;

22 (8) speaker of the house of representatives;

23 (9) standing committees of the senate and house of
24 representatives with primary jurisdiction over state hospitals;

25 (10) state auditor; and

26 (11) comptroller.

27 (d) An annual status report submitted under this section is

1 public information under Chapter 552, Government Code.

2 Sec. 552.104. RETALIATION PROHIBITED. The department or a
3 state hospital may not retaliate against a department employee, a
4 state hospital employee, or any other person who in good faith
5 cooperates with the inspector general under this subchapter.

6 SECTION 4. Section 261.101, Family Code, is amended by
7 adding Subsection (b-1) and amending Subsection (c) to read as
8 follows:

9 (b-1) In addition to the duty to make a report under
10 Subsection (a) or (b), a person or professional shall make a report
11 in the manner required by Subsection (a) or (b), as applicable, if
12 the person or professional has cause to believe that:

13 (1) an adult was a victim of abuse or neglect as a
14 child; and

15 (2) the alleged or suspected perpetrator of the abuse
16 or neglect may pose a threat of abuse or neglect to:

17 (A) another child; or

18 (B) an elderly or disabled person as defined by
19 Section 48.002, Human Resources Code.

20 (c) The requirement to report under this section applies
21 without exception to an individual whose personal communications
22 may otherwise be privileged, including an attorney, a member of the
23 clergy, a medical practitioner, a social worker, a mental health
24 professional, an employee or member of a board that licenses or
25 certifies a professional, and an employee of a clinic or health care
26 facility that provides reproductive services.

27 SECTION 5. Subchapter F, Chapter 411, Government Code, is

1 amended by adding Section 411.1103 to read as follows:

2 Sec. 411.1103. ACCESS TO CRIMINAL HISTORY RECORD
3 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES. (a) The
4 Department of State Health Services is entitled to obtain from the
5 department criminal history record information maintained by the
6 department that relates to a person:

7 (1) who is:

8 (A) an applicant for employment at a state
9 hospital;

10 (B) an employee of a state hospital;

11 (C) a person who contracts or may contract to
12 provide goods or services to the Department of State Health
13 Services at a state hospital or an employee of or applicant for
14 employment with that person;

15 (D) a volunteer with a state hospital; or

16 (E) an applicant for a volunteer position with a
17 state hospital; and

18 (2) who would be placed in direct contact with a
19 patient at a state hospital.

20 (b) Criminal history record information obtained by the
21 Department of State Health Services under this section may not be
22 released or disclosed to any person except:

23 (1) on court order;

24 (2) with the consent of the person who is the subject of
25 the criminal history record information;

26 (3) for purposes of an administrative hearing held by
27 the Department of State Health Services concerning the person who

1 is the subject of the criminal history record information; or

2 (4) as provided by Subsection (c).

3 (c) The Department of State Health Services is not
4 prohibited from releasing criminal history record information
5 obtained under this section to the person who is the subject of the
6 criminal history record information.

7 (d) Subject to Section 411.087, the Department of State
8 Health Services is entitled to:

9 (1) obtain through the Federal Bureau of Investigation
10 criminal history record information maintained or indexed by that
11 bureau that pertains to a person described by Subsection (a); and

12 (2) obtain from any other criminal justice agency in
13 this state criminal history record information maintained by that
14 criminal justice agency that relates to a person described by
15 Subsection (a).

16 (e) This section does not prohibit the Department of State
17 Health Services from obtaining and using criminal history record
18 information as provided by other law.

19 SECTION 6. Section 48.051(c), Human Resources Code, is
20 amended to read as follows:

21 (c) The duty imposed by Subsections (a) and (b) applies
22 without exception to a person whose knowledge concerning possible
23 abuse, neglect, or exploitation is obtained during the scope of the
24 person's employment or whose professional communications are
25 generally confidential, including an attorney, clergy member,
26 medical practitioner, social worker, employee or member of a board
27 that licenses or certifies a professional, and mental health

1 professional.

2 SECTION 7. Section 552.011, Health and Safety Code, is
3 repealed.

4 SECTION 8. Not later than December 1, 2013, the executive
5 commissioner of the Health and Human Services Commission shall
6 adopt rules necessary to implement Subchapter C, Chapter 552,
7 Health and Safety Code, as added by this Act.

8 SECTION 9. (a) Not later than December 1, 2013, the Health
9 and Human Services Commission's office of inspector general shall
10 begin employing and commissioning peace officers as required by
11 Section 552.101, Health and Safety Code, as added by this Act.

12 (b) Not later than January 1, 2014, the Department of State
13 Health Services shall develop the training required by Section
14 552.052, Health and Safety Code, as added by this Act.

15 (c) The Department of State Health Services shall ensure
16 that each state hospital employee receives the training required by
17 Section 552.052, Health and Safety Code, as added by this Act,
18 regardless of when the employee was hired, not later than September
19 1, 2014.

20 SECTION 10. Section 411.1103, Government Code, as added by
21 this Act, applies only to background and criminal history checks
22 performed on or after the effective date of this Act.

23 SECTION 11. If before implementing any provision of this Act
24 a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 12. This Act takes effect immediately if it receives
3 a vote of two-thirds of all the members elected to each house, as
4 provided by Section 39, Article III, Texas Constitution. If this
5 Act does not receive the vote necessary for immediate effect, this
6 Act takes effect September 1, 2013.